

ORIGINAL



0000127940

1 Michael J. LaVelle – State Bar No. 002296  
 2 Matthew K. LaVelle – State Bar No. 018828  
 3 **LAVELLE & LAVELLE, PLC**  
 4 2525 East Camelback Road, Suite 888  
 5 Phoenix, AZ 85016  
 6 MJL@LaVelle-LaVelle.com  
 7 Matt@LaVelle-LaVelle.com  
 8 Telephone: (602) 279-2100  
 9 Facsimile: (602) 279-2114  
 10 *Attorneys for Defendants Tom Hirsch,*  
 11 *Berta Walder, Howard Walder and Harish P. Shah*

RECEIVED

2011 AUG -1 A 11: 02

AZ CORP COMMISSION  
DOCKET CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION**

12 In the matter of:  
 13  
 14 RADICAL BUNNY, L.L.C., an Arizona  
 15 limited liability company,  
 16  
 17 HORIZON PARTNERS, L.L.C., an  
 18 Arizona limited liability company,  
 19  
 20 TOM HIRSCH (aka TOMAS N.  
 21 HIRSCH)and DIANE ROSE HIRSCH,  
 22 husband and wife;  
 23  
 24 BERTA FRIEDMAN. WALDER (aka  
 25 BUNNY WALDER, a married person,  
 26  
 27 HOWARD EVAN WALDER, a  
 28 married person,  
 29  
 30 HARISH PANNALAL SHAH and  
 31 MADHAVI H. SHAH, husband and  
 32 wife,  
 33  
 34 Respondents.

**DOCKET NO. S-20660A-09-0107**

**MOTION TO REOPEN  
HEARING AND TO ADD  
EVIDENCE TO THE RECORD**

**(Oral Argument Requested)**

Arizona Corporation Commission  
**DOCKETED**

AUG 1 2011

DOCKETED BY

1 Respondent's move to re-open the hearing and to allow additional evidence  
2 for the following reasons:

3  
4 The hearing officer will recall Mr. Hoffman's testimony in which he said he  
5 told respondents on May 2, 2007 (T.R. 822) to completely shut down their  
6 business, Radical Bunny (T.R. 825,827). He had to acknowledge that the notes,  
7 Exhibit-S-22(g), S-22(i) which he says supported this testimony were written in  
8 two different pens and that as momentous as the decision was,  
9 nothing was ever sent in writing to confirm it. He also claimed to have told  
10 Respondents that no Quarles & Brady documents were to be used. (T.R. 830)

11  
12  
13  
14 No other individual supported his testimony.

15 Mr. Hoffman's documents came from a joint investigation by the SEC and  
16 the Arizona Corporation Commission. In the pre-investigation phase Quarles &  
17 Brady was subpoenaed and produced documents under that subpoena.  
18 Respondents received what purported to be the entire Quarles & Brady file. Only  
19 recently did we learn that the documents that Mr. Hoffman provided had what  
20 appears to be deliberate omissions. When the lawyers for the Class Action  
21 Plaintiffs obtained access to the files of the Radical Bunny Trustee, it turned out  
22 that the Trustee had several communications that had never been presented by  
23 either Quarles & Brady or Mr. Hoffman in response to their subpoena.  
24  
25  
26  
27  
28

1 Most important, attached is an email dated May 21, 2007, which is after the  
2 date Mr. Hoffman swore he told Radical Bunny to stop doing business and during  
3 the time he says he thought that all business had ceased. That email enclosed  
4 documents "we are recommending as an interim step" clearly establishing that Mr.  
5 Hoffman knew Radical Bunny was still operating and casting real doubt on any  
6 story that its principals were told to stop.  
7

8  
9 We want to question Mr. Hoffman about these documents and we want to  
10 present additional evidence about what these documents were all about now that  
11 respondents have seen them and have been able to review the events surrounding  
12 them.  
13

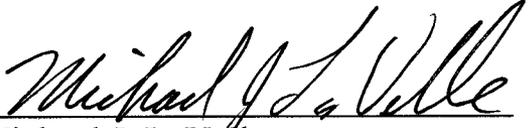
14  
15 Respondents therefore request:

- 16 1. That the hearing be re-opened;  
17  
18 2. That the Hearing Officer order Mr. Hoffman to re-appear for cross  
19 examination; and  
20  
21 3. That the Hearing Officer allows such additional such testimony on  
22 the subject of the attached documents and related events as the Respondents  
23 choose to present.  
24

25  
26  
27 DATED this 31<sup>st</sup> day of July, 2011.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**LAVELLE & LAVELLE, PLC**

By: 

Michael J. LaVelle  
2525 East Camelback Road, Suite 888  
Phoenix, Arizona 85016

*Attorneys for Respondents Tom Hirsch, Diane Rose Hirsch, Berta Walder,  
Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners,  
LLC*

ORIGINAL and 13 COPIES filed this  
31<sup>st</sup> day of July, 2011 with:

**ARIZONA CORPORATION COMMISSION**  
Securities Division  
1300 West Washington, Third Floor  
Phoenix, Arizona 85007

COPY of the foregoing MAILED this  
31<sup>st</sup> day of July, 2011 to:

Lyn Farmer  
Chief Administrative Law Judge  
**ARIZONA CORPORATION COMMISSION**  
1200 West Washington  
Phoenix, Arizona 85007

Julie Coleman  
**ARIZONA CORPORATION COMMISSION**  
Securities Division  
1300 West Washington, Third Floor  
Phoenix, Arizona 85007





One Renaissance Square  
Two North Central Avenue  
Phoenix, Arizona 85004-2391  
602/229-5200  
FAX: 602/229-5690

Attorneys at Law in  
Milwaukee and Madison, Wisconsin  
Phoenix and Tucson, Arizona  
Chicago, Illinois  
Naples, Florida

FAX TRANSMITTAL COVER SHEET

To: Tom Hirsch, et al.  
Company: Radical Bunny  
Fax number: 602-682-5154  
Phone number: 602-682-5150

From: Christian J. Hoffmann, III  
Phone number: 3336/5336  
Sender's direct fax: 602-420-5008

Number of Pages (including cover sheet): 07  
Date & Time Faxed: Monday, May 21, 2007 7:22:06 PM

Client - Matter #: 128577.00002

Message:

Dear Tom, Bunny & Howard -

Attached for your review is a draft of the Participation Agreement we are recommending as an interim step. An investor would execute this each time a new loan is created with Mortgages Ltd to document the investor's participation in a portion of that loan.

We might be able to shorten the Accredited Investor questionnaire included in the Agreement a bit.

The fax following this one will contain disclosures about the Loan itself.

THE INFORMATION CONTAINED IN THIS MESSAGE IS PERSONAL AND CONFIDENTIAL  
FOR THE RECIPIENT(S) NAMED ABOVE.  
IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR,  
PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND  
RETURN THIS MESSAGE TO US BY MAIL. THANK YOU.

IN CASE OF ANY TRANSMISSION PROBLEM,  
CALL (602) 229-5200

within 3 days  
over to funding  
checks are deposited  
1 yr is not guaranteed

PARTICIPATION AGREEMENT

Reference is made to the Promissory Note No. \_\_\_\_\_ ("the "Note") dated as of \_\_\_\_\_, 2007 by and between Mortgages Ltd as the borrower under the Note (the "Borrower") and Radical Bunny, LLC as the lender ("Radical Bunny") relating to a loan (the "Loan") made by Radical Bunny to the Borrower in the principal amount of \$ \_\_\_\_\_ and referenced as Loan No. \_\_\_\_\_. A copy of the Note is attached as Exhibit A to this Agreement. The Note is secured by certain assets of Mortgages Ltd as set forth in the Security Agreement, a copy of which is attached hereto as Exhibit B (the "Security Agreement").

SIMPLIFY

info available for review, please contact our office.

Radical Bunny and \_\_\_\_\_ (the "Participant") hereby agree as follows:

1. Purchase. The Participant <sup>has remitted</sup> ~~shall~~ deposit with Radical Bunny \$ \_\_\_\_\_ (the "Purchase Price") and Radical Bunny shall sell, assign and transfer to the Participant, upon receipt of the Purchase Price, an undivided ~~22.0~~ <sup>divided</sup> % interest in and to all of Radical Bunny's rights and obligations with respect to the Note and the Security Agreement (collectively, the "Loan Documents").

?

2. Payment to Participant. Radical Bunny will, within seven (7) days of receipt of any payments of principal or interest on the Loan or any collection of realization upon the collateral securing the Loan, or other amounts received in respect of the Loan, pay such amounts directly to the Participant in accordance with the Participant's undivided <sup>divided</sup> percentage interest in the Loan, less the Administrative Fee set forth in Section 3 below. If the Borrower defaults in making payments due under the Note, the Participant agrees to pay reasonable costs and expenses, including legal and other professional fees, in connection with the enforcement of the Loan Documents and collection of any amounts owing under the Loan Documents. Radical Bunny agrees to <sup>notify</sup> ~~consult~~ with the Participant in advance of undertaking actions or incurring costs to collect the obligation represented by the Loan Documents, or realization upon the collateral securing the Loan, provided that Radical Bunny will make all final decisions respecting such actions or costs and the Participant will be bound by such decisions. <sup>Participant may choose to</sup> ~~Radical Bunny will~~ make best efforts to take participant out. Redemption fee <sup>expand</sup> ~~one they decide~~ and remain for the duration.

? Management  
of the interest  
portion only  
Management  
Only  
earnings

3. Administration Fee to Radical Bunny. The Participant shall pay Radical Bunny an Administration Fee of equal to two (2) percentage points of the interest the Borrower pays on the Note for Radical Bunny's services rendered in connection with the Note and this Agreement. For example, if the Note pays interest at the rate of twelve percent (12%) per annum, the Participant will receive ten percent (10%) per annum and Radical Bunny will receive two percent (2%) per annum as its Administration Fee. The Participant authorizes Radical Bunny to deduct the amount of the Administration Fee from the interest paid on the Note. <sup>whatever rate will be -2%</sup>

4. Representations of Radical Bunny. Radical Bunny represents and warrants that (i) it is legally authorized to enter into the Agreement (the "Agreement"); and (ii) it is the legal and beneficial owner of the interest being assigned under the Agreement and that such interest is free and clear of any adverse claim.

5. Representations of Participant. The Participant represents and warrants that (i) it is legally authorized to enter into the Agreement; and (ii) that it has received, read, understands

*refer to application by participant for change of status or assignment*

and completed the Loan Participation Disclosure Statement and Acknowledgment attached hereto as Exhibit C (the "Disclosure Statement"), along with such other documents and information as Participant has requested to make its own credit analysis and decision to enter into the Agreement.

6. Attorney in Fact. The Participant hereby appoints and authorizes Radical Bunny as its true and lawful agent and attorney-in-fact in the name, place and stead of the Participant and in the sole discretion of Radical Bunny (i) to take such action on behalf of the Participant and exercise such powers, including, but not limited to, making, executing, signing, acknowledging, answering to, delivering, filing and recording on behalf of Radical Bunny and the Participant such documents and instruments as Radical Bunny deems necessary or appropriate to carry out the provisions of the Agreement and the Loan Documents; and (ii) to enforce such rights of Radical Bunny and the Participant as Radical Bunny deems necessary or appropriate under the terms of the Loan Documents, including but not limited to, collection of, or realization upon, collateral securing the Loan or other amounts due to Radical Bunny and the Participant respecting the Loan. The Agreement shall not create a partnership, joint venture or other similar relationship between Radical Bunny and the Participant.

7. Obligations of Radical Bunny. Radical Bunny shall service the Note and the Loan Documents pursuant to this Agreement. Radical Bunny's duties shall include collecting, handling payments on the Note; transmitting such payments to Participant based on Participant's pro rata share; maintaining records; monitoring loan compliance on the part of the Borrower and enforcing any rights of Participant in Radical Bunny's sole discretion as set forth in Section 6. Additionally, Radical Bunny shall hold the original Loan Documents in its possession.

*All generate assets*

*assets*

*in possession @ MTH LTD (7)*

*Callahan*

8. Restrictions on Radical Bunny. Radical Bunny agrees not to enter into any amendment to the Loan Documents affecting (i) the principal amount of the Note, (ii) the term or maturity of the Note or (iii) the rate of interest payable in respect of the Note, without the written consent of both the Participant and Radical Bunny. *Extension may be available upto 90 days from original maturity date limited to 90 days.*

*Agreed per [unclear]*

9. Assignment. The Participant shall not assign Participant's interest in the Note without the written consent of Radical Bunny, which consent shall not be unreasonably withheld. In order for any such assignment to be effective, Participant's assignee must expressly agree to be bound by the terms hereof and must review and complete a copy of the Loan Participation Disclosure Statement and Acknowledgment attached as Exhibit C. *(application) Done need to return & if we do not accept assignment*

10. Entire Agreement; Amendment; Waiver. This Agreement supersedes any prior negotiations, discussions or agreements between the parties hereto and constitutes the entire agreement of the parties hereto with respect to the Loan Documents. No right or obligation under this Agreement may be amended or waived by any means except by an instrument in writing signed by the party against which enforcement of such amendment or waiver is sought.

11. Counterparts. This Agreement may be executed in multiple counterparts and by each of the parties hereto on separate counterparts, each of which shall be deemed an original and all of which shall be taken together to constitute one and the same document.

12. Governing Law. This Agreement is intended to be governed by and construed in accordance with the laws of the state of Arizona without reference to conflict of laws.

IN WITNESS WHEREOF, intending to be legally bound, each of the undersigned has caused the Agreement to be executed on \_\_\_\_\_, 2007.

Radical Bunny, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

PARTICIPANT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

EXHIBIT A  
Promissory Note

*try to  
take out*

**EXHIBIT B**  
**Security Agreement**

*try to  
take out*

EXHIBIT C *application*

**Loan Participation Disclosure Statement and Acknowledgments**



One Renaissance Square  
Two North Central Avenue  
Phoenix, Arizona 85004-2391  
602/229-5200  
FAX: 602/229-5690

Attorneys at Law in  
Milwaukee and Madison, Wisconsin  
Phoenix and Tucson, Arizona  
Chicago, Illinois  
Naples, Florida

FAX TRANSMITTAL COVER SHEET

To: Tom Hirsch, et al  
Company: Radical Bunny  
Fax number: 602-682-5154  
Phone number: 602-682-5150

From: Christian J. Hoffmann, III  
Phone number: 3336/5336  
Sender's direct fax: 602-420-5008

Number of Pages (including cover sheet): 05  
Date & Time Faxed: Monday, May 21, 2007 7:25:16 PM

Client - Matter #: 128577.00002

Message:  
This is Exhibit C to the Participation Agreement.

**THE INFORMATION CONTAINED IN THIS MESSAGE IS PERSONAL AND CONFIDENTIAL  
FOR THE RECIPIENT(S) NAMED ABOVE.  
IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR,  
PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND  
RETURN THIS MESSAGE TO US BY MAIL. THANK YOU.**

**IN CASE OF ANY TRANSMISSION PROBLEM,  
CALL (602) 229-5200**